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GOVERNOR

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The Commonwealth of Massachusetts
Executive Office of Public Safety and Security
Fire Safety Commission

Automatic Sprinkler Appeals Board

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JOHN J. MAHAN
CHAIRMAN

MAURICE M. PILETTE
VICE CHAIRMAN

Docket # 2010-06
26 North Main Street
Sherborn, Massachusetts

AUTOMATIC SPRINKLER APPEALS BOARD DECISION

A) Statutory and Regulatory Framework

This administrative appeal hearing is held in accordance with Massachusetts General Law, Chapter 30A; Chapter 148, section 26G and Chapter 6, section 201, to determine whether to affirm the decision of the Sherborn Fire Department requiring the Appellant, Edward M. Rose (hereinafter "Appellant") to install automatic sprinklers in a building owned by the Appellant located at 26 North Main Street, Sherborn, MA.

B) Procedural History

By written notice received by the Appellant on March 5, 2010, the Sherborn Fire Department issued a determination to the Appellant, requiring automatic sprinklers to be installed in an addition, which the Appellant is proposing to construct at his property located at 26 North Main Street, Sherborn, MA. The determination was issued pursuant to the provisions of M.G.L. c. 148 § 26G. On March 17, 2010, the Appellant filed an appeal of the decision with the Automatic Sprinkler Appeals Board. The Board held a hearing on May 12, 2010, at the Department of Fire Services, Stow, Massachusetts.

Appearing on behalf of the Appellant was Edward M. Rose. Appearing on behalf of the Sherborn Fire Department was Deputy Chief Jonathan Dowse and Water Commissioner, Roger Demler.

Present for the Board were: John Mahan, Chairman; Maurice M. Pilette, Vice Chairman; Frank Kodzis; Thomas Coulombe; Alexander MacLeod; and Aime DeNault. Peter A. Senopoulos, Esquire, was the Attorney for the Board.

C) Issue(s) to be Decided

Whether the decision of the Head of the Fire Department requiring sprinklers in the building located at 26 North Main Street, Sherborn, MA, should be affirmed, reversed or modified?

D) Evidence Received

1. Application for Appeal by Appellant
2. Statement in Support of Appeal
3. Letter to Chief McPherson, Sherborn Fire Department from Appellant
4. Order of Notice to the Appellant from the Sherborn Fire Department
5. Letter to Board from Chairman of the Water Commission, Town of Sherborn re: Appeal
6. Letter to Board from Manager of Marlboro Fire Extinguisher, Inc. re: property
7. Copy of a data form from the Sherborn Board of Health re: well/pump test data
8. Map of property layout (titled: 1931 County Layout – Variable Width)
9. Estimated Automatic Sprinkler System water and water pressure demand from JFP Solutions, Inc.
10. 1st Notice of Hearing to Parties
11. 2nd Notice of Hearing to the Appellant
12. 2nd Notice of Hearing to Sherborn Fire Department
13. Copies of two Memoranda that accompany Hearing Notices

E) Subsidiary Findings of Fact

- 1) By written notice received by the Appellant on March 5, 2010, the Sherborn Fire Department issued a determination to the Appellant, requiring automatic sprinklers to be installed in an addition, which the Appellant is proposing to construct at his property located at 26 North Main Street, Sherborn, MA. The determination was issued pursuant to the provisions of M.G.L. c. 148 § 26G. On March 17, 2010, the Appellant filed an appeal of the decision with the Automatic Sprinkler Appeals Board. The Board held a hearing on May 12, 2010, at the Department of Fire Services, Stow, Massachusetts.
- 2) The Appellant testified that the building at issue is a single story, concrete block building used as an automotive repair shop. The existing building is approximately 4,015 sq. ft. The proposed addition would add approximately 4,244 sq. ft., bringing the total building size to 8,259 sq. ft. The new one-story addition will be constructed out of steel and be used for automotive repair.
- 3) The Appellant did not contest a determination that the building combined with the new addition is now subject to the provisions of s. 26G. However, it is the Appellant's position that a sprinkler system is not required in this building and addition, as proposed, since there is currently insufficient water and water pressure to adequately supply such a sprinkler system. The Appellant testified that in the Town of Sherborn, only well water is available. According to testimony, the Town of Sherborn never adopted the provisions of M.G.L. c. 148, section 26G when it was a local option law. The Deputy Fire Chief indicated that one reason for the Town not adopting section 26G, may have been due to the lack of a municipal water supply.
- 4) Appellant noted that the current provisions of s. 26G has specific language the states that "No such sprinkler system shall be required unless sufficient water and water pressure exists". Appellant indicated that the building, while located in downtown Sherborn, does not have access to a municipal water supply and that the nearest available water supply capable of

providing adequate water pressure is located approximately 2 miles away in the Town of Natick.

- 5) To confirm the Appellant's position, he consulted with a sprinkler designer, who indicated that the Appellant's building would require at least 587 GPM (gallons of water per minute) at 47.6 PSI to support an adequate sprinkler system. The design professional determined that Appellant's existing water supply currently could only produce 14 GPM. The Appellant indicated that in order to sprinkle the building, a 36,000-gallon storage tank would be needed and that the total work would cost approximately \$140,000.00.
- 6) The Appellant is requesting a waiver from the sprinkler requirements of section 26G based upon the lack of sufficient water and water pressure.
- 7) The Deputy Fire Chief testified that there are only three other buildings in the Town of Sherborn that are currently sprinklered, two of which are town offices. The buildings each have 20,000-gallon tanks and pumps that would operate the sprinkler system, if needed. The Deputy also testified that there is an approximately 1-mile long gravity fed underground 8" pipe system that draws water from a pond that could be used to support fire fighting activities in the downtown area. However, there was testimony that the pipe would be unavailable to the Appellant due to the nature of the pipe's temporary and limited water pressure and intended use only by the local fire department. The Town indicated that this pipe may be employed for future possible expansion of a hydrant system. The Chief did not contest any of the testimony or documentation presented by the Appellant. The Chief generally concurred that under the circumstances sufficient water or water pressure does not exist. The Sherborn Fire Chief believes that he does not have the authority to render a waiver from the provisions of the law.

F) Ultimate Findings of Fact and Conclusions of Law

- 1) The provisions of M.G.L. c. 148, s. 26G, states, (in pertinent part): "Every building or structure, including any additions or major alterations thereto, which totals, ***in the aggregate***, more than 7,500 gross square feet in floor area shall be protected throughout with an adequate system of automatic sprinklers in accordance with the provisions of the state building code." This law, as stated, reflects recent amendments to the statute enacted by Chapter 508 of the Acts and Resolves of 2008. The new provisions apply to "the construction of buildings, structures or additions or major modifications thereto, which total, in the aggregate, more than 7,500 gross square feet *permitted after January 1, 2010*". (Sec. 6, Chapter 508 of the Acts of 2008).
- 2) The existing building combined with the proposed addition will consist of approximately 8,259 gross square feet in floor area. The board finds that this amount is clearly more than 7,500 gross square feet, which triggers the provisions of s. 26G. Neither party provided evidence, which would contest this finding.
- 3) On October 14, 2009 this Board, under the authority of M.G.L. c. 30A, s. 8, issued a written guidance document to assist heads of fire departments and building owners to

understand the basic requirements of this revised law. In that document, the Board detailed the various changes in the law and provided guidance regarding the types of buildings or structures subject to the enhanced sprinkler protection requirements. In the document, the Board also provided guidance regarding the provisions of the statute that states that “no such sprinkler system shall be required unless sufficient water and water pressure exists”. This language, created an exemption for situations involving lack of sufficient water and water pressure. In determining cases involving this possible exemption the Board indicated that it would be guided by the Massachusetts Appeals Court case of Chief of the Fire Department of Worcester v. John Wibley, et al. 24 Mass. App. Ct. 912 (1987).

In that case the court concluded that “The term “sufficient water and water pressure exists” means that the owner of a building or addition to which the statute applies must have access to a source of water sufficient to operate an adequate system of sprinklers, or the exemption applies. The source may be either on the land on which the new building or addition is constructed or off the land, provided that it is legally available to the owner of the building or addition.” In the Wibley case, the court, in agreeing with the fire chief, concluded that sufficient water and water pressure existed, notwithstanding the fact that the source of water was not on the owner’s land, but was legally available by means of a connection requiring the excavation to a legally available water main located 500 yards away.

- 4) In this case, based upon the testimony and evidence received from the Appellant, the Appellant’s consultant and corroborated by the Sherborn Fire Department, it is clear that the appellant does not have legal access to any source of water sufficient to operate an adequate system of sprinklers. There is no source of adequate water or water pressure on the land on which the new building or addition is being constructed. Likewise, there is no sufficient and legally available water available off the Appellant’s land within the Town of Sherborn. According to the evidence at the hearing the only possible access to sufficient water was approximately two-miles away and within the adjoining town of Natick. However, there was no evidence indicating that this water was legally accessible to the Appellant as is required by the Wibley Case.

G) Decision and Order of the Automatic Sprinkler Appeals Board

Based upon the evidence presented to the Board and for the reasons stated herein, the Board unanimously determines that the building located at 26 North Main Street, Sherborn, MA is not subject the sprinkler requirements of M.G.L. c. 148, s.26G due to a lack of sufficient water and water pressure. Accordingly, the Order of the Sherborn Fire Department is hereby **reversed.**

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H) Vote of the Board

John Mahan, Chairman	In Favor
Maurice Pilette, Vice Chair	In Favor
Frank Kodzis, Boston Fire Marshal	In Favor
Thomas Coulombe	In Favor
Alexander MacLeod	In Favor
Aime DeNault	In Favor

I) Right of Appeal

You are hereby advised you have the right to appeal this decision, in whole or in part, within thirty (30) days from the date of receipt of this order, pursuant to section 14 of chapter 30A of the General Laws.

SO ORDERED,



John Mahan, Chairman

Dated: June 16, 2010

A COPY OF THIS DECISION AND ORDER WAS FORWARDED BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED TO:

Edward M. Rose
ECAM Rose, LLC
26 North Main Street
Sherborn, Massachusetts 01770

Chief Neil W. McPherson
Sherborn Fire Department
22 North Main Street
Sherborn, Massachusetts 01770